APPENDIX

OPINIONS BELOW

ALVA G. BLANCHARD

VS

CITY OF SHREVEPORT

No. 125,849

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

JUDGMENT

This matter came to be heard on a rule nisi for a preliminary injunction, which after hearing, the rule nisi was recalled and the preliminary injunction denied.

A rehearing was applied for, argued, submitted and overruled.

Judged read and signed at Shreveport, Louisiana, this the 24th day of August, 1956.

S/ Robt. J. O'Neal

JUDGE

A-2

NO. 8603

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

ALVA G. BLANCHARD - - - Plaintiff-Appellant

VS.

CITY OF SHREVEPORT - - - Defendant-Appellee

Appealed from the First Judicial District Court of Louisiana, in and for the Parish of Caddo.

Hon. Robert J. O'Neal, Judge

Alva G. Blanchard, In Proprio Persona

Attorney for Appellant

William L. Murdock;
James W. Hammett;
Robert E. Eatman

Attorneys for Appellee

Hon George W. Hardy, Jr.
Hon Edward L. Gladney
Hon. H. W. Ayres,

Judges

By Gladney, J.,

Alva G. Blanchard has perfected a devolutive appeal to this court from a judgment sustaining an exception of no cause and no right of action, recalling a rule nisi and denying a demand for a writ of preliminary injunction. In this court the appellee has filed a motion to dismiss the appeal on the ground that the issues presented are moot inasmuch as the work sought to be enjoined has already been completed. Accompanying and in support of the motion is evidence in the form of affidavits. No opposition has been offered to the motion.

Appellant instituted his action on April 14, 1956, and therein sought a permanent injunction to prohibit the City of Shreveport from executing certain plans to pave a ditch or stream adjoining petitioner's property. It is alleged the contemplated work would destroy improvements placed along the banks and bed of the stream by petitioner, destroy the natural beauty of the stream and thereby cause him irrevocable injury. On August 1, 1956, by supplemental and amended petition, plaintiff alleged that a contractor was at that time engaged in executing the City's plans and that a substantial part of his improvements had already been destroyed, whereupon he prayed for the issuance of a rule nisi for a writ of preliminary injunction. Prior to a hearing on the rule, which was fixed for August 14, 1956, the defendant filed an exception of res judicata and a plea of estoppel, which were overruled. The court, however, sustained an exception of no cause and/or right of action,

recalled the rule nisi and denied plaintiff's demands for a writ of preliminary injunction. From the judgment so rendered, orders of devolutive appeal were granted. The appeal was perfected and the record filed in this court on August 27, 1956.

The motion to dismiss must be sustained. Attached to the motion are affidavits of Robert L. Horton, City Engineer of the City of Shreveport, and Bobby R. Adams, Field Engineer, employed by the City of Shreveport, to the effect that the work contemplated in the City's plans for the paving of the drainage ditch adjoining plaintiff's property at 3618 Fairfield Avenue was completed on September 20, 1956. This evidence is in no wise contradicted.

We are left with no other alternative than to dismiss the appeal as there can be no doubt that the acts of defendants which plaintiff would prevent by this appeal, have been fully performed.

It is well settled that in cases where no practical results can be obtained, the courts will not entertain the appeal. See: *Dunham vs. Town of Slidell* (1913), 133 La. 212, 635; *Carey vs. Louisiana Highway Commission* (1926), 161 La. 435, 108 So. 874; *Gulf Coast Const. Co. vs. Adams* (1928), 165 La. 873, 116 So. 217; *Turner vs. City of New Orleans,* (1927), 164 La. 1013, 115 So. 128; *Pettingill vs. Hills, Inc.,* (1942), 199 La. 557, 6 So. 2d 660; *Freret Civic Association vs. Orleans Parish School Board* (1953), 223 La. 407, 65 So. 2d 893; *State ex rel Clement Betpouey, Jr. & Co. vs. Jefferson Parish Waterworks District No. Five,* (1953) 223 La. 566, 66 So.

2d 338; and *Smallen Navarre, Jr. vs. Lafayette Parish School Board and J. C. Landry,* (1955), 226 La. 876, 77 So. 2d 520.

This appeal is dismissed at appellant's cost.

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SUPREME COURT OF LOUISIANA

New Orleans

BY FOURNET, C. J.:

January 21, 1957

ALVA G. BLANCHARD

vs.

CITY OF SHREVEPORT

No. 43,311

In re: Alva G. Blanchard Applying for Certiorai or Writ of Review to the Court of Appeal, Second Circuit, Parish of Caddo.

Writ refused. The judgment complained of is correct.

/s/ JBF

/s/ ALP

/s/ JBH

/s/ FWH

/s/ EHMcC

/s/ JDS

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STATUTES AND REGULATIONS

Article 296, Louisiana Code of Practice

296. Definition.—

Injunction, or prohibition, is a mandate obtained from a court, by a plaintiff, prohibiting one from doing an act which he contends may be injurious to him or impair a right which he claims.

Article 298, (5), Louisiana Code of Practice

298. Cases in which directed against defendant.—

The injunction must be granted, and directed against the defendant himself, in the following cases:

5. When the defendant disturbs the plaintiff in the actual and real possession which such plaintiff has had for more than one year, either of a real estate or of a real right, of which he claims either the ownership, the possession or the enjoyment.

Article 661, Louisiana Civil Code of 1870

Art. 661.—

He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make

use of it, while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to it ordinary channel, where it leaves his estate.

R. S. 38:215, Louisiana Revised Statutes of 1950

§ 215. Obstruction of drainage prohibited.—

No person shall wilfully obstruct any natural or artificial drainage canal, creek, bayou, or small river, or any public or private drainage.

Whoever violates this Section shall be fined not less than twenty-five dollars nor more than one hundred dollars and in default of payment of fine and costs shall be imprisoned for not less than thirty days nor more than six months.

Each obstruction shall constitute a separate offense.

Failure on the part of anyone who has felled or cut trees in such manner that the tops obstruct any drainage or has placed any other obstruction in any drainage to remove the obstruction shall constitute prima facie evidence of wilful intent within the meaning of this Section.

The word drainage as used in this Section means any natural drain or any artificial drain which has been used for the purposes of drainage for at least ten years.

28 U. S. C. A. § 1257 (3)

§ 1257. State courts; appeal; certiorari.—

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Amendment 14, § 1, United States Constitution

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE GEO E. DUTTON ENGINEERS

GIDDENS-LANE BUILDING
SHREVEPORT, LOUISIANA

Member
American Society
of
Civil Engineers

June 14, 1956

Mr. Alva Blanchard
Shreveport, Louisiana

Re: *Blanchard vs. Shreveport St. Vincent Ditch*

Dear Mr. Blanchard:

In approaching this problem an observation is necessary. This is a hill creek from source to outlet, having a drop or fall in its present bottom of 17.3 feet in traveling 3000 feet from St. Vincent to Smitherman ditch at Fairfield. This means a grade of 0.5-%, (two and one-half times the City's requirements). The scouring effect of this grade shows in present ditch and city plans use slow down grade to offset it.

The City contends:

(1) That the flat grade asked for by you will allow silt to collect and damage drain when paved;

(2) That the flat grade will cause ditch to overflow its banks below dam;

(3) That the present rocked walls and dam will cause turbulance and harm to ditch;

(4) That the only practical grade then can be used is a 0.2-% and that any change from same will harm the drain;

(5) That in order to have an efficient ditch, the Blanchard dam and rock walls must be torn out and swimming pool and irrigation system outlet cut off, damaging you approximately $8,000.00;

I have examined City plans for this drain improvement and made my own observation of creek and your improvements, see profile of ditch and map attached for reference.

My opinion is that all four contentions are pure camouflage and have no basic grounds for the destruction of your improvements.

(I) Silt does not collect in a scouring ditch that flows 18 feet per second;

(2) The flat grade at lower end of ditch has small effect on discharge and velocity at flood stage and will not damage the efficiency of ditch. See approximate hydraulic gradient shown on profile;

(3) By actual observation at present dam at flood stage, the water surface is smooth, showing no turbulance. This shows that surface water grade is true grade to calculate discharge;

(4) This contention falls if you check profile, since the series of grade drops at upper end of ditch show a definite grade of 0.75-% at flood stage.

Finally if City could see the possibilities of incorporating your present walls and dam in their plans, your improvements would be saved ($8,000.00) and a $3,000.00 for the City as you have previously offered to bear the expense of rocking both sides and bottom past your property as shown by map attached.

Respectfully submitted,

s/ Geo E. Dutton

GEO. E. DUTTON, Engineer
Member American Society

GED:dn

FILED
MAY 15 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 920

ALVA G. BLANCHARD

Petitioner

vs.

CITY OF SHREVEPORT

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM L. MURDOCK
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LECOMTE, SHREVEPORT, LOUISIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 920

ALVA G. BLANCHARD

Petitioner

vs.

CITY OF SHREVEPORT

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

This suit was filed by petitioner in the First Judicial District Court in and for Caddo Parish, Louisiana, on April 14, 1956. The petition, in brief, alleges that petitioner is the owner of certain residential property in Shreveport upon which he has constructed a swimming pool and other improvements; that these improvements were either connected with or actually located in a stream which adjoins the rear boundary of petitioner's property;

that the City of Shreveport was planning to pave this stream and was in the process of receiving bids from contractors; that such paving would destroy petitioner's improvements and do irreparable injury to petitioner; that petitioner had proprosed an alternative plan to the City which was rejected; and that the course planned by the City would violate laws of the State relative to drainage and use of running water and would be an improper exercise of the City's powers. The petition then prayed that the City of Shreveport be permanently enjoined from disturbing petitioner in the possession and enjoyment of the improvements he had placed in the stream adjoining his property and that the City be enjoined from constructing its planned facilities insofar as it would affect petitioner in the use of his improvements, or disturb the natural drain, or mar the beauty, by erecting any slab concrete masonry work on or about the stream.

On May 22, 1956, petitioner filed a supplemental and amending petition praying for court costs and attorney's fees.

On August 1, 1956, petitioner filed a second supplemental and amending petition whereby he alleged that a contractor was currently paving the stream in accordance with the City's plans and that a substantial part of his improvements had been destroyed. He prayed that the City be ordered to show cause why a preliminary injunction should not be issued to the same effect as the permanent injunction previously prayed for. The rule was made returnable August 14. The contractor doing

the work under contract with the City was not made a party to the suit.

On August 14, the City filed an Exception of Res Judicata, a Plea of Estoppel, an Exception of No Cause or Right of Action and an Answer to the Rule for a Preliminary Injunction.

On August 24, 1956, a judgment was read and signed showing that after hearing, the rule nisi was recalled and the preliminary injunction denied, and that a rehearing was applied for, argued, submitted and overruled.

Petitioner duly perfected an appeal from the judgment denying a preliminary injunction to the Court of Appeal, Second Circuit, State of Louisiana. On September 20, 1956, the City filed in the Court of Appeal a Motion to Dismiss Appeal on the basis that the issues had become moot, the paving work and other improvements sought to be enjoined having been completed by the contractor. Affidavits by the City Engineer and a field engineer employed by the City were attached to the motion in support thereof.

On October 25, the Court of Appeal in a written decision sustained the City's motion and dismissed the appeal at petitioner's cost. A rehearing was applied for and refused on November 29.

On December 27, 1956, petitioner filed in the Supreme Court of the State of Louisiana an application for writs of certiorari or review. On January 21, 1957,

the Supreme Court refused the writs, stating that the judgment complained of is correct. It is from this judgment that petitioner has applied to this Honorable Court for a writ of certiorari directed to the Louisiana Supreme Court.

This matter has never been tried on the merits and no testimony has ever been adduced. The exhibits referred to in petitioner's "Statement" (p. 4 et seq.) were never filed in evidence and most of the facts set out in his "Statement" do not appear in petitioner's pleadings.

ARGUMENT

The Supreme Court should refuse to review this case for the following reasons:

I. No federal question has ever been pleaded, argued or raised in any manner in any court below.

II. There is no federal question of substance involved in this case.

III. The judgment of the state court was based upon a non-federal ground fully adequate to support the judgment.

IV. The issues in this case have become entirely and completely moot.

I.

No Federal Question Has Ever Been Pleaded, Argued Or Raised In Any Manner In Any Court Below.

It is essential to the jurisdiction of the Supreme Court under 28 U. S. C. A. Sec. 1257 (3) that a substantial federal question be properly raised in the State court proceedings. *Rule 19, Revised Rules of Supreme Court; Michel v. State of Louisiana*, 350 U. S. 91, 76 S. Ct. 158, 100 L. Ed. 83 (1955), rehearing den. 350 U. S. 955, 76 S. Ct. 340, 100 L. Ed. 831; *Ellis v. Dixon*, 349 U. S. 458, 75 S. Ct. 850, 99 L. Ed. 1231 (1955), rehearing den. 350 U. S. 855, 75 S. Ct. 37, 100 L. Ed. 759; *White River Lumber Co. v. Arkansas ex rel. Applegate*, 279 U. S. 692, 49 S. Ct. 457, 73 L. Ed. 903 (1929); *Whitney v. California*, 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927); *Missouri Pac. R. Co. v. Hanna*, 266 U. S. 184, 45 S. Ct. 36, 69 L. Ed. 235 (1924). An examination of the pleadings and the record in this case discloses that at no stage of the proceedings in the state court was any federal question ever raised. The first mention of the Constitution of the United States or of due process or of equal protection appears in the petition for writ of certiorari filed in this Court.

II.

There Is No Federal Question Of Substance Involved In This Case.

Under Rule 19 of the Revised Rules of the Supreme Court of the United States and under numerous decisions of this Court, before this Court will review the decision

of a state court it must appear that a substantial federal question is involved. It must also appear that there are "special and important reasons" for the review. *Equitable Life Assurance Society v. Brown*, 187 U. S. 308, 23 S. Ct. 123, 47 L. Ed. 190 (1902); *Rice v. Sioux City Memorial Park Cemetery*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

For the first time in this case, petitioner has asserted in his petition for writ of certiorari that his rights under the Fourteenth Amendment to the Constitution of the United States have been violated. An analysis of petitioner's pleadings and argument shows that from the beginning of this suit his claim for relief has been based on a contention that the manner in which the City of Shreveport proposed to carry out a drainage project was in violation of certain Louisiana statutes relative to drainage and use of running water. His present contention that his rights under the Constitution have been violated is based purely and simply upon the grounds that the action of the City violated these statutes and that the failure of the state court to so hold amounted to a deprivation of due process and equal protection of the law. Actually he is presenting no federal question at all but only a question of whether or not the state court was correct in its application of the state law.

And even if there is a federal question involved here, it is in no way substantial. The issues originally presented in this case involved primarily the application of state statutes to a particular state of facts peculiar to petitioner. The decision in this case is of no importance

whatsoever to anyone except the litigants and could not affect the public generally or any group of persons.

III.

The Judgment Of The State Court Was Based Upon A Non-Federal Ground Fully Adequate To Support The Judgment.

This court has consistently ruled that it will not review a state court judgment based upon an adequate and independent non-federal ground. *Murdock v. Memphis*, 20 Wall, 590, 636 (1875); *Herb v. Pitcairn*, 324 U. S. 117, 125, 65 S. Ct. 459, 463, 89 L. Ed. 789 (1945); *Durley v. Mayo*, 351 U. S. 277, 76 S. Ct. 806, 100 L. Ed. 771 (1956); *Love v. Griffith*, 266 U. S. 32, 45 S. Ct. 12, 69 L. Ed. 157 (1924).

In this case, the judgment of the highest state court denied writs of certiorari and review stating that "The judgment complained of is correct." The judgment complained of was a judgment of the Court of Appeal, Second Circuit, dismissing petitioner's appeal on the basis that the issues involved had become moot. No federal question having ever been presented to either the Louisiana Supreme Court or the Court of Appeal, the judgment of necessity was based on a non-federal ground entirely. The non-federal ground could either have been that the issues had become moot as decided by the Court of Appeal or that petitioner had stated no cause or right of action, as decided originally by the District Court. Either

of these grounds is entirely adequate as shown on the face of the record.

IV.

The Issues In This Case Have Become Entirely And Completely Moot.

The sole object of this action was to enjoin the City of Shreveport from carrying out a proposed drainage paving project on a draigage ditch located entirely on property owned by the Congregation of the Daughters of the Cross, which property is to the rear of petitioner's property. After the trial court had sustained the City's exception of no cause or right of action and while this case was on appeal to the Court of Appeal from that judgment, the proposed work was done and completed by the contractor. The City filed a motion to dismiss in the Court of Appeal, attaching affidavits of the City Engineer and a field engineer to the effect that the work was completed. The Court of Appeal dismissed the appeal on the ground that the matter had become moot.

The action which petitioner sought to enjoin having been completed it would be impossible for this Court to grant any effectual relief. See *Love v. Griffith*, 266 U. S. 32, 45 S. Ct. 12, 69 L. Ed. 157 (1924); *Rice v. Sioux City Memorial Park Cemetery*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

CONCLUSION

In conclusion, it is respectfully submitted that the petition for a writ of certiorari should be denied for the reasons set out above.

Respectfully submitted,

WILLIAM L. MURDOCK
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Shreveport, Louisiana

PIKE HALL, JR.
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Counsel for Respondent

CERTIFICATE

I hereby certify that a copy of the above and foregoing brief in opposition to petition for certiorari has been served upon Alva G. Blanchard, petitioner, appearing In Propria Persona, by depositing same in a United States Post Office or mail box, with first class postage prepaid, addressed to petitioner at his post office address, 3618 Fairfield Avenue, Shreveport, Louisiana, this ..... day of May, 1957.

.....

Of Counsel.